

## OFFICE OF THE MONITOR

NUNEZ, ET AL. V. CITY OF NEW YORK, ET AL.

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September 19, 2016

**Via ECF**

The Honorable Laura T. Swain  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, NY 10006

*Re: Nunez, et al. v. City of New York, et al., 11-cv-5845 (LTS) (JCF)*

Dear Judge Swain:

We write to advise the Court about a series of agreements the Monitoring Team reached with the New York City Department of Correction (hereafter the “Department”), Plaintiffs’ Class Counsel, the United States Attorney’s Office for the Southern District of New York (“SDNY”) about the confidentiality and use of certain documents that are developed and produced by the Monitoring Team and the Department as required by the Consent Judgment. Exhibit 1 to this letter identifies the agreements reached regarding the above-mentioned persons or entities’ use of: 1) the draft Monitor’s report; 2) the narrative description of the Department’s Compliance Report<sup>1</sup>; and 3) the information produced by the Department in connection with the Compliance Report<sup>2</sup> by the Plaintiffs’ Class Counsel and SDNY.

Over the last few months, the Monitoring Team worked closely with Plaintiffs’ Class Counsel, SDNY and the Department to carefully consider the use and confidentiality of the information produced by the Monitoring Team and the Department

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<sup>1</sup> Section XIX (Reporting Requirements and Parties’ Right of Access), Paragraph 4(a)

<sup>2</sup> Section XIX (Reporting Requirements and Parties’ Right of Access), Paragraph 4(b), 4(c), 4(d) except for Paragraph 4(c)(viii). The Monitoring Team and the Parties agreed to discuss the use and confidentiality of the quarterly reports by the UOF Auditor after the first report is issued.

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to ensure the Monitor can responsibly fulfill his obligations under the Consent Judgment. This includes allowing the Monitoring Team the opportunity to analyze data produced by the Department to provide appropriate context in order to avoid the misinterpretation or the dissemination of incomplete or confusing information.

Please do not hesitate to contact us if you have any questions or require further information.

Sincerely,

s/ Steve J. Martin

Steve J. Martin, Monitor

Anna E. Friedberg, Deputy Monitor



**Exhibit 1<sup>1</sup>****Legend**

<b>Category 1</b>	The red box means the information is confidential	<b>Category 2</b>	The blue box means that the information is not confidential, but the Parties have agreed not to use the information during the 60-day period between the issuance of the Department's Compliance Report and the filing of the Monitor's Report with the Court. The information is not confidential after the filing of the Monitor's Report.
<b>Category 3</b>	The green box means the information identified in the "Description" column is not confidential and may be used to inform discussions or responses to inquires related to the City Jails during the 60-day period between the issuance of the Department's Compliance Report and the filing of the Monitor's Report with the Court. However, the information identified in the "Status of Confidentiality" column may not be disclosed during the 60-day period between the issuance of the Department's Compliance Report and the filing of the Monitor's Report with the Court. The information is not confidential after the filing of the Monitor's Report. Further, the <u>underlying documents</u> with the raw data will not be publicly posted or provided to any third parties.		

Description	Status of Confidentiality	Consent Judgment Provision	Corresponding Compliance Report Appendix
Draft Monitor's Report	Confidential ( <b>Category 1</b> )	§ XX, , ¶ 17	
<b><u>Compliance Report Narrative</u></b> The narrative portion of the Compliance Report is confidential. Plaintiffs and DOJ will have the opportunity during the comment period to the draft Monitor's Report	Confidential ( <b>Category 1</b> )	§ XIX, ¶ 4.a.	

<sup>1</sup> This agreement is not intended to preclude the Monitor from developing or incorporating information in the Monitor Report filed with the Court that he deems appropriate to fulfill his responsibilities under the Consent Judgment and consistent with the obligations in Section XX (Monitoring), Paragraph 17. Further, this agreement is not intended to preclude the Department from using its own information for any purpose outside this litigation, including any public reporting that the Department is required to publicly report as part of the ordinary course of business, as contemplated by the Protective Order previously entered in this case (Dkt. 89, ¶ 9 at pg. 5). To the extent that the Department publicly reports data or information as part of the ordinary course of business, this agreement does not prohibit the Parties from discussing that data or information once it has become publicly available.

to request the Monitor incorporate factual points from the narrative into the Monitor's Report (assuming the Report does not already incorporate those facts). If the requested facts are not ultimately included in the Final Monitor's Report, then Plaintiffs and DOJ may have the opportunity to ask the Monitor and the Department if the fact(s) may be made public after the Monitor's Report is issued. It is contemplated that these types of factual issues will be non-controversial (i.e. the number of staff in the Trials & Litigation Division).			
Number of Use of Force Incidents by Status, Facility, and Injury Class during the Reporting Period.	Not Confidential, but information categorized by age shall not be discussed during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 3</b> )	§ XIX, ¶ 4.b.i.	Appendix A
Average Daily Population by Facility and Inmate Age Category.	No discussion during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.b.ii.	Appendix B
Average Staffing Levels by Facility, Rank, and Inmate Age Category during the Reporting Period.	No discussion during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.b.iii.	Appendix C
Average Staff on Probationary Status Assigned on Regular Basis to Housing Units for 16-17 Year Old Inmates by Facility and Rank during the Reporting Period.	No discussion during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.b.iv.	Appendix D
Number of Inmates Injured in Use of Force Incidents by Incident Status, Facility, and Injury Class during the Reporting Period.	Not Confidential, but information categorized by age shall not be discussed during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 3</b> )	§ XIX, ¶ 4.b.v.	Appendix E
The number of inmate-on-inmate assaults and fights involving Young Inmates, the number of Young Inmates who were injured in such assaults or fights, and the number of Young Inmates who suffered Class A Injuries in such assaults or fights during the Reporting Period.	No discussion during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.b.vi.	Appendix F
The number of staff injuries resulting from Use of Force Incidents during the	No discussion during 60 Day Period of	§ XIX, ¶	Appendix G

Reporting Period.	development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§4.b.vii.	
The number of cell extractions involving use of chemical agents only and no other Use of Force during the Reporting Period.	No discussion during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.b.viii. & § XIX, ¶ 4.b.ix.	Appendix H
Number of Use of Force Incidents Referred for Full ID Investigation by Incident Status and Facility during the Reporting Period.	Not Confidential, but information categorized by age shall not be discussed during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 3</b> )	§ XIX, ¶ 4.b.x.	Appendix I
Number of Full ID Investigations Closed by Facility during the Reporting Period.	Not Confidential, but information categorized by age shall not be discussed during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 3</b> )	§ XIX, ¶ 4.b.xi.	Appendix J
Use of Force numbers and dates of Use of Force incidents that remain open as of the end of the Reporting Period.	Confidential ( <b>Category 1</b> )	§ XIX, ¶ 4.c.i.	Appendix K
Total number of Full ID Use of Force Investigations open cases by quarter and year as of the end of the Reporting Period.	Not Confidential, but information categorized by age shall not be discussed during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 3</b> )	§ XIX, ¶ 4.c.i.	Appendix K
Use of Force Investigations (Facility & ID) with Conclusion of Violation <i>except for aggregate data and qualitative analysis developed by Monitor and reported in Monitor's Report.</i>	Confidential ( <b>Category 1</b> )	§ XIX, ¶ 4.c.ii.1. & § XIX, ¶ 4.c.ii.2.	Appendix L
Number of Staff who have received Counseling Meetings <i>by facility and rank</i> . The shield numbers of Staff and the dates of Counseling Meetings.	Confidential ( <b>Category 1</b> )	§ XIX, ¶ 4.c.iii.	Appendix M
Total number of Staff system-wide who were counseled in the reporting period during the Reporting Period.	No discussion during 60 Day Period of development of Monitor Report, but is not confidential after filing of	§ XIX, ¶ 4.c.iii.	Appendix M

	Monitor's Report ( <b>Category 2</b> )		
Number of wall mounted video surveillance cameras installed <i>by facility</i> .	Confidential ( <b>Category 1</b> )	§ XIX, ¶ 4.c.iv.	Appendix N
The total number of cameras installed system-wide during the Reporting Period.	Not Confidential ( <b>Category 3</b> )	§ XIX, ¶ 4.c.iv	Appendix N
Location of inoperable wall mounted video surveillance cameras and length of time the cameras have been inoperable.	Confidential ( <b>Category 1</b> )	§ XIX, ¶ 4.c.v.	Appendix O
Total number of inoperable video surveillance cameras system wide during the Reporting Period.	No discussion during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.c.v.	Appendix O
Names of Inmates placed in Punitive Segregation or Isolation.	Confidential ( <b>Category 1</b> )	§ XIX, ¶ 4.c.vi.	Appendix P
<ul style="list-style-type: none"> <li>Number of 18-year-old inmates placed in Punitive Segregation or Isolation during the Reporting Period.</li> <li>Reasons for the confinement (<i>i.e.</i>, the nature of the Inmate's infraction) of the 18-year-old inmates, but no identifying information during the Reporting Period.</li> <li>Number of 18 year old inmates placed in Punitive Segregation or Isolation that suffer from a mental illness during the Reporting Period.</li> </ul>	No discussion during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.c.vi.	Appendix P
A summary of the training provided to Staff Members pursuant to the Consent Judgment, including the name of each training course provided and the number of Staff who successfully completed the course during the Reporting Period.	No discussion during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )	§ XIX, ¶ 4.c.vii.	Appendix Q
Names and ranks of Staff assigned to Work Regularly in Young Adult Housing Area.	Confidential ( <b>Category 1</b> )	§ XIX, ¶ 4.c.ix.	Appendix S
Summary of Young Inmate Programming during the Reporting Period.	No discussion during 60 Day Period of development of Monitor Report, but is not confidential after filing of Monitor's Report ( <b>Category 2</b> )		